IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

UNITED STATES OF AMERICA,	:	
	:	
	:	
v.	:	CASE NO.: 1:19-CR-007 (LAG)
	:	
AMANDA SMITH, *et al.*,	:	
	:	
Defendants.	:	
	:	

ORDER

Before the Court are Defendant Amanda Smith's Motion to Suppress Evidence, Statements and all Fruits Obtained Pursuant to Illegal Stop and Seizure of Defendant and Subsequent Search of Residence (Doc. 31) and Motion to Suppress Search Warrant and Evidence Obtained Pursuant to Search of 194 Laramore Road (Doc. 32). Also, before the Court is Codefendant Daniel Calhoun's Motion to Suppress Evidence Illegally Seized (Doc. 34). For the reasons stated below, the Defendants' Motions (Docs. 31, 32, 34) are **DENIED.**

PROCEDURAL BACKGROUND

On February 14, 2019, Defendants Amanda Smith and Daniel Calhoun were charged in a three-count indictment for possession of methamphetamine with intent to distribute and possession of a firearm in furtherance of a drug trafficking crime. (Doc. 1.) On April 19 and 22, 2019, Defendants moved to suppress evidence and statements as fruits of a poisonous search and seizure. (Docs. 31, 32, 34.) The Government timely responded to all three Motions on May 6, 2019. (Doc. 39, 40.) Neither Defendant filed a reply, and a suppression hearing was held on September 5, 2019. (Doc. 50.) The Motions are now ripe for review. M.D. Ga. L.R. 7.3.1(A).

FACTUAL FINDINGS

At the suppression hearing on Defendants' Motions to Suppress, the Government offered the testimony of Sergeant Eddie Burgess of the Lee County Sheriff's Department

and seven exhibits, which were admitted.[1] Upon review of the witness's testimony, the exhibits, the Parties' arguments, and the record, the Court makes the following findings of fact.

On July 27, 2017, Sergeant Burgess began investigating Amanda Smith for trafficking methamphetamine. (Doc. 40-1 ¶ 10.) Sergeant Burgess learned through a confidential source that Smith was obtaining large quantities—approximately a kilogram—of methamphetamine from Atlanta, Georgia and bringing it back to Lee County, Georgia for distribution. (*Id.* ¶¶ 10, 12.) The confidential source stated that Smith would obtain methamphetamine from an unknown "Mexican" in Atlanta referred to only as "Amigo." (*Id.* ¶ 12.) Smith would then directly wire money to Mexico. (*Id.*) To do this, Smith would rent a vehicle, drive to a bank, and have a third person walk into the bank to complete the wire transaction. (*Id.*) She would then send a picture of the money and receipt to "Amigo." (*Id.*)

The confidential source further indicated that, between April and July 2017, they[2] purchased methamphetamine over twenty times from Smith. (*Id.* ¶ 11.) On one occasion, the confidential source even helped facilitate a transaction between Smith and an unknown female referred to as "Melissa" at the Highway 32 bridge on the Lee and Worth County lines in June 2017. (*Id.*) The confidential source stated that during this transaction Smith told them that her supply was running low—with only ten ounces of methamphetamine remaining. (*Id.*) They also told Sergeant Burgess that Smith's former boyfriend, Defendant Daniel Calhoun, was aware of Smith's operation. (*Id.* ¶ 13.) According to the confidential source, Smith would store methamphetamine at Calhoun's residence on Laramore Road in Lee County. (*Id.*) Calhoun even accompanied Smith on at least one transaction—the aforementioned Highway 32 bridge sale. (*Id.*)

On August 3, 2017, Major Danny McTyeire spoke with the confidential source, who informed Major McTyeire that Smith had gone to Atlanta to pick up a kilogram of methamphetamine around June or July 2017. (*Id.* ¶ 15.) Smith has several previous narcotics arrests and was convicted of the manufacture, sell, dispense, and distribution of methamphetamine on September 26, 2006. (*Id.* ¶ 16.) She was sentenced to a term of

[1] Unless otherwise noted, the factual findings are based on testimony given by Sergeant Burgess during the suppression hearing.

[2] As the identity of the confidential source is unknown, the Court intentionally uses the non-gendered,

probation, a condition of which was a Fourth Amendment waiver, providing:

> [T]he defendant . . . [s]hall submit to a search of his/her person, houses, papers, and/or effects any time of the day or night, with or without a search warrant, whenever requested to do so by a Probation Officer or any law enforcement officer, and he/she specifically consents to the use of anything seized as evidence in any Judicial proceeding or trial.

(Gov. Ex. 1 at 2.)

The confidential source informed Sergeant Burgess that Smith had two cell phones. (Doc. 40-1 ¶ 14.) On August 4, 2017, Major McTyeire reviewed the tolls of Smith's phones. (*Id.* ¶ 18.) From the tolls, he discovered that Smith was communicating with people who also have "narcotics related arrests." (*Id.*) Sergeant Burgess further investigated Smith by listening to jail phone calls during which Smith spoke with various inmates at the Lee County Jail, and he learned that Smith was taking an "active interest in various narcotics associates" who were currently incarcerated. (*Id.* ¶ 19.) Of particular note was the fact that Smith was attempting to determine how to identify unmarked Lee County narcotics police vehicles. (*Id.*) Based on this investigation, Sergeant Burgess applied for and obtained a warrant authorizing the disclosure of enhanced cell site and GPS location information for Smith's cell phones on September 7, 2017. (*See* Gov. Ex. 2 at 11.) Pursuant to this warrant, the Lee County Sheriff's Department was able to obtain live location data from the subject phones whenever they were turned on. (*Id.* at 11–12.)

On October 22, 2017, at approximately 12:43 p.m., Sergeant Burgess received a location for one of Smith's phone, placing it near Perry, Georgia. (Gov. Ex. 4 at 3.) Knowing that Perry is just off Interstate 75 (I-75) and a common route for drug traffickers traveling between Atlanta and South Georgia, Sergeant Burgess continued to monitor Smith's phone location data. Sergeant Burgess confirmed that Smith's location continued to travel southward toward Lee County. With this knowledge and believing that Smith might be bringing drugs back from Atlanta, Sergeant Burgess and Major McTyeire planned to intercept Smith. In separate vehicles, the officers stationed themselves on New York Road, near the Lee and Sumter County lines, believing this to be the most likely route Smith would take. At approximately 4:30 p.m., Sergeant Burgess observed a white, 2013 Ford F-350

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plural pronoun to refer to the confidential source.

emblazoned with "Calhoun and Son Construction" on its side. The truck was traveling southbound on Pryor Road toward the Lee County line. As the truck passed the county line, Sergeant Burgess positively identified Calhoun driving the truck and Smith riding in the passenger seat.

Sergeant Burgess and Major McTyeire stopped the truck. Sergeant Burgess approached the driver side door while Major McTyeire approached the passenger side door. Sergeant Burgess testified that Calhoun would not follow orders, appeared to be agitated, and caused him concern for his and Major McTyeire's safety. Accordingly, Sergeant Burgess removed Calhoun from the truck and handcuffed him. Meanwhile, Major McTyeire asked Smith for consent to search the truck. (Gov. Ex. 3.) Smith responded, "This is not my vehicle. I have no rights in this." (*Id.*) Calhoun was then asked for consent to search the truck, which he refused to give. (*Id.*) Both Smith and Calhoun were handcuffed and placed on the tailgate of the truck while Major McTyeire, pursuant to Smith's Fourth Amendment waiver, searched the truck. (*Id.*)

During the approximately four-minute search of the truck, Major McTyeire discovered a methamphetamine pipe inside the glove compartment on the passenger side. (*Id.*) Both Calhoun and Smith were placed under arrest, and Calhoun was escorted away from the truck and placed in the back of one of the officers' vehicles. (*Id.*) Major McTyeire later performed a more extensive search of the vehicle discovering approximately 67.2 grams of methamphetamine. (*Id.*; Gov. Ex. 4 at 3.)

As can be heard on the recording of the arrest, as Major McTyeire was performing the more extensive search, Sergeant Burgess read Smith her *Miranda* rights; and Smith acknowledged that she understood her rights.[3] (Gov. Ex. 3 at 4:49:26–52.) When Major McTyeire found the drugs, he held them up and announced to Smith and Sergeant Burgess that he had found drugs in the truck. (*Id.*) He then returned to the tailgate, and Sergeant Burgess informed him that Smith had requested an attorney. (*Id.* at 4:50:52–58.) Major McTyeire acknowledged this but stated that he just wanted to tell Smith something. (*Id.*) Smith then interrupted Major McTyeire and stated that she did not necessarily need an attorney because the drugs were not hers. (*Id.*) After Smith made this statement, Major

[3] Smith only raised a specific objection to her statements that were subsequently included in the search

McTyeire informed Smith that Calhoun had told him that Smith put the drugs in the glove compartment. (*Id.*) Major McTyeire then told Smith that she could either talk or go to federal prison. (*Id.* at 4:50:58–51:06.) Smith later informed Sergeant Burgess and Major McTyeire that additional quantities of methamphetamine were being stored at Calhoun's residence, 194 Laramore Road, inside a lockbox in the second drawer of a dresser in the spare bedroom and that the key was on a key chain on her purse. (*Id.*)

Later that same day, Sergeant Burgess and other officers went to 194 Laramore Road. Officers entered the residence to let Smith's dog out. While there, the officers conducted a protective sweep. Two hours later, Sergeant Burgess obtained a search warrant for 194 Laramore Road. (*See* Gov. Ex. 4.) The officers executed the search warrant and discovered additional quantities of methamphetamine and various firearms. Following the search, both Defendants were video interviewed at the Lee County Sheriff's Office after being advised of their *Miranda* rights. (*See* Gov. Exs. 5–7.)

DISCUSSSION

I. Smith's Motions to Suppress

A. Initial Seizure

"A traffic stop is a seizure within the meaning of the Fourth Amendment." *United States v. Campbell*, 912 F.3d 1340, 1349 (11th Cir. 2019) (citing *Whren v. United States*, 517 U.S. 806, 809–10 (1996)). Such a seizure is reasonable under the Fourth Amendment if supported by reasonable suspicion. *Id.* "Reasonable suspicion consists of 'a sufficiently high probability that criminal conduct is occurring to make the intrusion on the individual's privacy interest reasonable.'" *United States v. Yuknavich*, 419 F.3d 1302, 1311 (11th Cir. 2005) (quoting *United States v. Knights*, 534 U.S. 112, 121 (2001)). To make this determination, the court considers the "totality of the circumstances . . . to see whether the detaining officer has a particularized and objective basis for suspecting legal wrongdoing." *Id.* "[I]nchoate and unparticularized suspicion or hunch of criminal activity is not enough to satisfy the minimum level of objectivity required." *Id.* (internal quotation marks omitted). "The officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* (citation and internal quotation marks

warrant for 194 Laramore Road. (*See* Docs. 31, 32.)

omitted).

Law enforcement had reasonable suspicion to believe that Smith was engaging in criminal conduct—specifically trafficking methamphetamine. Sergeant Burgess and Major McTyeire had been investigating Smith for approximately three months. During that investigation, they had received information from the confidential source that Smith was selling methamphetamine, which she acquired from a source in Atlanta. Law enforcement also was aware that Smith had been arrested several times in the past on drug related charges and was on probation at the time for a drug related charge. The confidential source further demonstrated an intimate understanding of Smith's operation, stating that they even helped facilitate a transaction at the Highway 32 bridge. The jail calls revealed that Smith was communicating with inmates—showing an active interest in narcotics associates who were in jail and seeking counter surveillance information regarding unmarked Lee County police vehicles. Sergeant Burgess also learned from the confidential source that Calhoun was aware of Smith's operation and would occasionally accompany her on some transactions.

The confidential source's information was corroborated when Sergeant Burgess received a "ping" on Smith's location, indicating that she was traveling southbound on I-75 —a route known for trafficking methamphetamine into South Georgia—and when he identified Smith and Calhoun in the vehicle travelling along New York Road. Based on the totality of circumstances, Sergeant Burgess and Major McTyeire had a reasonable suspicion that Smith was transporting methamphetamine when they stopped Calhoun's vehicle. *See United States v. Harrelson*, 465 F. App'x 866, 868 (11th Cir. 2012) (finding officer had reasonable suspicion that defendant was trafficking methamphetamine, based on on-going criminal investigation and professional experience, to effectuate an investigative stop of his truck). As the officers' stop and subsequent search of the truck was based on reasonable suspicion that Smith was engaged in criminal activity, law enforcement was authorized to search the vehicle in which Smith was travelling pursuant to the Fourth Amendment waiver. Accordingly, there is no basis to suppress the evidence found in the truck.

B. Statements

Smith also seeks to suppress her subsequent custodial statements that were made after she was arrested on the day of the search of the truck. (Doc. 31 at 9–12.) This

argument is based on the premise that the statements were the result of an unlawful seizure and therefore fruit of the poisoned tree. As the Court has found that there was reasonable suspicion supporting the search and seizure of the truck, suppression is not warranted on this basis. Smith, however, alternatively argues that her statements to the officers should be suppressed, as they "were products of threatening and coercive statements and actions by the officers without the benefit of counsel or *Miranda* warnings." (*Id.* at 11.)

While Sergeant Burgess was not wearing a body camera, Major McTyeire's body camera picked up the audio of Sergeant Burgess reading Smith her *Miranda* rights, and Smith can be heard confirming her understanding of her rights.[4] As Sergeant Burgess was advising Smith of her rights, Major McTyeire was searching the vehicle. When Major McTyeire found the drugs in the truck, he held them up, exclaimed that he had found drugs in the truck, and walked back towards Smith and Sergeant Burgess. At this point, Smith had invoked her right to an attorney. Sergeant Burgess advised Major McTyeire of her invocation as Major McTyeire reached the tailgate. Major McTyeire acknowledged that he understood that Smith had invoked her right to counsel, but stated that he wanted to tell her something. Before Major McTyeire could make any further statement, Smith said that she did not necessarily need an attorney because the drugs were not hers. Major McTyeire then told Smith that Calhoun told him that Smith put the drugs in the glove compartment and that Smith was watching for the unmarked Lee County police vehicle. Major McTyeire then told Smith that she could either talk or go to federal prison. Smith responded that she would tell police anything they wanted to know.

"Before the government may introduce a suspect's uncounseled statement made during custodial interrogation, it must show that the suspect made a voluntary, knowing and intelligent waiver of his privilege against self-incrimination and his right to counsel." *United States v. Beale*, 921 F.2d 1412, 1434 (11th Cir. 1991). In making this determination, district courts engage in a two-part inquiry: "(1) relinquishment of the right must have been the product of a free and deliberate choice rather than intimidation, coercion, or deception, and

[4] Smith argued in the Motion to Suppress that she was not advised of her rights. (*See* Docs. 31, 32.) Sergeant Burgess testified that he *Mirandized* Smith and that he could be heared reading Smith her rights in the background of the video. While the audio is faint, Major McTyeire's body camera did, in fact, pick up the audio of Sergeant Burgess reading Smith her rights at or about the 4:49:26 mark of the video. Smith can be heard confirming her understanding of her rights at the 4:49:52 mark. (Gov. Ex. 3.)

(2) waiver must have been made with the awareness of both the right being abandoned and the consequences of the decision to abandon that right." *Id.* at 1434–35. Courts should consider the totality of the circumstances in making this determination. *Id.* at 1435.

The Parties do not dispute that the statements at issue are uncounseled statements made during a custodial interrogation. Furthermore, the second part of the inquiry is satisfied as Sergeant Burgess can be heard advising Smith of her *Miranda* rights, and Smith can be heard acknowledging those rights. The question remains, then, if the relinquishment of the right was the product of a free and deliberate choice or if the police intimidated, coerced, or deceived Smith in order to induce the waiver. The Court finds that the relinquishment of the right was voluntary in this case.

A review of the totality of the circumstances, shows that Smith withdrew her request for an attorney of her own volition when the drugs were found in the truck. While it is true that Major McTyeire made several statements thereafter that could arguably be considered to have been intimidating or of a coercive nature, he made these statements *after* Smith revoked her invocation of counsel. Here, as in *United States v. Valdez*, Smith "initiated the colloquy with a [statement]. [Major McTyeire's] statements were in response to [Smith's statement]." 880 F.2d 1230, 1234 (11th Cir. 1989). While the invocation of the right to counsel and the revocation thereof took place over a much more abbreviated time period in this case, the fact remains that Smith said she did not need counsel, not in response to anything which could have been seen as questioning by Major McTyeire but in response to the recovery of the drugs. This is distinguishable from the close question that the court highlighted in *Valdez* where, the agent "admitted at the suppression hearing that his statements could possibly have been interpreted as questioning and that he did discuss the possibility of leniency with appellant in exchange for his cooperation." *Id.* Here the statements which arguably could be considered intimidation and coercive clearly were made after—even if very close in time—to Smith's revocation of her invocation of her right to counsel. Accordingly, Smith's statements are both voluntary and knowing, and the Government may use them.

C. Search Warrant

Finally, Smith argues that the search warrant for 194 Laramore Road was not valid, as the underlying affidavit was predicated upon illegally seized evidence, stale information,

inaccuracies and omissions, and uncorroborated information from the confidential source. (Doc. 32 at 3–4.) An affidavit supporting a search warrant is presumptively valid. *Franks v. Delaware*, 438 U.S. 154, 171 (1978). In considering a challenge to the validity of a warrant affidavit, the Court must consider: "(1) whether the alleged misstatements in the affidavit were made either intentionally or in reckless disregard for the truth and, if so, (2) whether, after deleting the misstatements, the affidavit is insufficient to establish probable cause." *United States v. Kirk*, 781 F.2d 1498, 1502 (11th Cir. 1986).

Smith has alleged three misstatements: (1) the affidavit listed the object of the search as 162 Laramore Road instead of 194 Laramore Road, (2) the affidavit gave incorrect driving directions to the residence, and (3) Smith was *Mirandized* at the scene. (Doc. 32 at 12.) With regards to the first two statements, Smith has not shown that Sergeant Burgess intentionally misstated or recklessly disregarded the truth of either. "A warrant must describe with particularity the place to be searched and the items or persons to be seized in order to satisfy the Fourth Amendment." *United States v. Long*, 300 F. App'x 804, 812 (11th Cir. 2008) (citing *United States v. Jenkins*, 901 F.2d 1075, 1081 (11th Cir. 1990)). A description is sufficiently particular when "it enables the searcher to reasonably ascertain and identify" the place to be search or things authorized to be seized. *See United States v. Wuagneux*, 683 F.2d 1343, 1348 (11th Cir. 1982). The "test for determining the adequacy of the description of the place to be searched is whether it enables the executing officer to locate and identify the premises with reasonable effort, and whether there is any reasonable probability that another premises might be mistakenly searched." *United States v. Sherrell*, 979 F.2d 1315, 1317 (8th Cir. 1992) (internal quotation marks omitted).

Here, the description of the residence in the warrant clearly enabled law enforcement to properly locate and identify the premises. The warrant application contained the accurate description of the structure and street address six of the seven times an address appears. While Smith argues that the application misstated the address as 162 Laramore Road, this incorrect address appeared only once in the application while the correct address appeared throughout the application and, more importantly, on the actual warrant. Having erroneous driving directions also does not render the description improper, as there is no allegation that the wrong property was actually searched or that law enforcement had any confusion

about the premises they were authorized to search. *See United States v. Occhipinti*, 998 F.2d 791, 799 (10th Cir. 1993). Because the description enabled law enforcement to reasonably ascertain and identify the place to be searched, the misstatements did not render the warrant invalid.

Smith also argues that Sergeant Burgess made several material omissions in his affidavit. Specifically, Smith argues that the affidavit should have disclosed (1) that law enforcement had already entered 194 Laramore Drive and found narcotics and firearms; (2) any benefits or promises given to the confidential source for information; (3) that the confidential source was reliable; (4) the criminal background, if any, of the confidential source; and (5) the confidential source's personal animosity, or lack thereof, toward Smith. (Doc. 32 at 12–13.) "[A] warrant affidavit violates the Fourth Amendment when it contains omissions 'made intentionally or with a reckless disregard for the accuracy of the affidavit.'" *Madiwale v. Savaiko*, 117 F.3d 1321, 1326–27 (11th Cir. 1997) (quoting *United States v. Martin*, 615 F.2d 318, 329 (5th Cir. 1980)). Recklessness may be inferred "from proof of the omission" when "the facts omitted from the affidavit are clearly critical to a finding of probable cause." *Id.* at 1327 (citation and internal quotation marks omitted). "Omissions that are not reckless, but are instead negligent, or insignificant and immaterial, will not invalidate a warrant." *Id.* "Intentional or reckless omissions by an affiant in a search warrant affidavit will invalidate a warrant 'only if inclusion of the omitted facts would have prevented a finding of probable cause.'" *Brown*, 370 F. App'x at 21 (quoting *Madiwale*, 117 F.3d at 1327).

First, there is no evidence that drugs or guns were found during the initial entry and protective sweep of 194 Laramore Road. The only testimony on this point was offered by Sergeant Burgess who clearly stated that law enforcement did not search the residence until after the warrant was issued. The Court has no basis to believe that this was false.

None of the other "omissions" were critical to a finding of probable cause. "Probable cause to support a search warrant exists when the totality of the circumstances allows the conclusion that 'there is a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Id.* (quoting *Illinois v. Gates*, 462 U.S. 213, 238 (1983)). In other words, probable cause existed "if facts within the magistrate's knowledge and of which he had reasonably trustworthy information would warrant a man of reasonable caution in

the belief that a crime was committed and that evidence is at the place to be searched." *United States v. Strauss*, 678 F.2d 886, 892 (11th Cir. 1982).

Sergeant Burgess's affidavit for the search warrant set forth sufficient facts for a finding of probable cause. Sergeant Burgess detailed the three-month investigation and the information provided to him by the confidential source, including Smith's ongoing methamphetamine distribution network and Atlanta supply source. Contrary to Smith's argument, the affidavit did not have to specifically prove up the confidential source's reliability because there was independent corroboration developed through the investigation and the subsequent recovery of drugs in the truck, as detailed in the affidavit. Furthermore, as discussed above, Smith's statements that were included in the affidavit were knowing and voluntary and therefore admissible. The discovery of the drugs in the truck, when coupled with Smith's statement that drugs could be found at 194 Laramore Road, provided a sufficient factual basis for the magistrate to find probable cause supporting the issuance of the warrant. *See United States v. Haimowitz*, 706 F.2d 1549, 1556 (11th Cir. 1983).

II. Calhoun's Motion to Suppress

Calhoun also moved to suppress evidence allegedly illegally seized, arguing that the stop of his truck and subsequent search were made without reasonable suspicion. (Doc. 34 at 1–2.) Calhoun further argues that, as the stop and search were unreasonable, all fruits of the poisoned tree must be suppressed. (*Id.* at 4–5.) Because the Court has already found that the search and seizure of the truck were proper and that suppression is not warranted with regards to the evidence found in the truck or the evidence recovered during the search of 194 Laramore Road, Calhoun's Motion to Suppress is therefore also denied.

CONCLUSION

For the foregoing reasons, Defendants' Motions to Suppress (Docs. 31, 32, 34) are **DENIED**.

SO ORDERED, this 10th day of September, 2019.

/s/ Leslie A. Gardner
LESLIE A. GARDNER, JUDGE
UNITED STATES DISTRICT COURT